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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Revisions to Price Cap Rules for AT&T	)	CC Docket No. 93-197
	)	

To: The Commission

REPLY COMMENTS OF WILTEL, INC.

WilTel, Inc. ("WilTel"), hereby respectfully submits its Reply Comments in the above-captioned proceeding.[1] The record in this docket, including the comments submitted by AT&T, demonstrates that price cap regulation should be improved, rather than largely abandoned.

I. INTRODUCTION

AT&T asserts that competitive forces justify elimination of certain restrictions on its ability to charge discriminatory or unreasonable rates.[2] However, AT&T's current and contemplated pricing practices indicate that it

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[1]Revisions to Price Cap Rules for AT&T, CC Docket No. 93-197, Notice of Proposed Rulemaking ("NPRM") (released July 23, 1993).

[2]See Comments of American Telephone and Telegraph Company ("AT&T Comments") at 1-2.

can and will use its market power to the detriment of those that are in some sense "captive" customers or that AT&T no longer wishes to serve.[3] For example, AT&T seeks to retain up to $270 million of "unused headroom"[4] in Basket 1, once it includes only basic long distance services; this is an ominous sign for an agency charged with providing "all the people of the United States" efficient communications "at reasonable charges,"[5] since AT&T's current prices are purportedly set at competitive levels.

In evaluating the proposed changes, the Commission should consider not only the effect on the services that would be deregulated, but the effect on services that would remain in Basket 1. If competitive pressures cause AT&T to decrease prices for some customers, the Commission should require that it decrease prices for all customers, just as AT&T would in a fully competitive market.[6] This would be more productive than simply deregulating the more competitive rate plans.

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[3]See Comments of Competitive Telecommunications Association ("CompTel Comments") at 4 (discussing recent increase in Basket 1 rates).

[4]AT&T Comments at 5-6.

[5]47 U.S.C. § 151 (1988).

[6]The Commission recognized this principle when it established a separate basket for residential and small business users. Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, ¶ 361 (1989) (observing that a separate basket would ensure that those customers receive "their full share of access flowthroughs").

Permitting AT&T to discriminate against certain types of customers, in contrast, moves the industry toward a monopolistic model, where a supplier can engage in price discrimination by segmenting the market.

Residential customers deserve special protection from unreasonable practices and discrimination.[7] MTS is one of the few services in which price shopping can be very difficult for a person with insufficient incentive or sophistication to make the real "right choice." The typical AT&T residential user may have only a rough understanding of the costs of placing a particular call,[8] much less the often confusing differences in rates and rate structures among different carriers and pricing plans. Rather than conduct a detailed cost/benefit analysis, many consumers will remain with AT&T basic rates even if competitors or AT&T Optional Calling Plans (OCPs) offer substantially better prices. There are millions of such people, compounding the potential injury, and also providing a "war chest" which AT&T could use to cross-subsidize other services.[9]

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[7]It would be naive to assume that residential users will benefit, in the long run, from market segmentation even if AT&T initially discriminates against small business customers.

[8]A consumer subject to basic MTS rates will typically not know the per-minute rate applicable to a particular call until the bill is received; in contrast, most consumer choices involve purchase of a product with a fully disclosed price.

[9]If AT&T has 20 million residential customers that meet the above description and each spends an average of only five dollars per month on interLATA long distance, the total annual revenues from this group equal $1.2 billion per year. If its

II. AT&T SHOULD NOT BE ALLOWED TO SEGMENT THE MTS MARKET

Competition alone cannot prevent AT&T from unreasonably discriminating against residential or non-OCP customers. The very relief that AT&T seeks indicates that such discrimination would be a key element in AT&T's pricing strategy. It wishes to segment the MTS market into business, basic residential and OCP users. Such segmentation would serve only to allow AT&T to target price cuts to customers that are willing and able to use competitive services, while denying price reductions to general residential users.

To support residential/business segmentation, AT&T cites the use of different End User Line Charges (EULCs) for those two types of customers.[10] The analogy does not hold water. The application of a higher EULC to business lines can be justified because businesses generally: have a greater ability to pay, receive more value from MTS, place and receive more long distance calls and use the local access network during peak-periods. None of these reasons can be used to excuse discrimination against residential users. Business customers pay additional charges in order to obtain an additional right, the right to use the service for business

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rates exceed competitive levels by just 10%, AT&T would have a substantial amount of money with which to cross-subsidize service provided to other customers.

[10]AT&T Comments at 13-15.

purposes. AT&T, on the other hand, would impose both higher prices and a use restriction on residential customers.[11]

AT&T's proposed segmentation of services subject to varying degrees of competition cannot be justified by cost causation principles adopted for a monopoly local service. Essentially, the business subscriber pays a higher local rate and EULC in return for the right to publicize its number and to conduct business activities by means of its service; that publicity and business use, in turn, generate calling volumes greater than that experienced by the typical residence, supporting the imposition of higher local charges. This rate dichotomy serves to reflect, in an imperfect manner, cost differences for a service that is generally not usage-sensitive. In contrast, AT&T plans to discriminate against residential customers for a service that is entirely usage-sensitive.

Further, the business/residential classification scheme has not been used by the LECs to segment the local market. As long as business rates are higher, it would be difficult for them to use such segmentation to the disadvantage of consumers or competitors. AT&T, in contrast, seeks to establish use

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[11]Business customers of local exchange service are not subject to use restrictions. For example, a beautician, physician, plumber or antique dealer may have a single line for both business and personal use; employees of larger businesses may be permitted to place or receive personal calls.

restrictions which permit it to discriminate in favor of business subscribers, which would facilitate segmentation.

This discriminatory segmentation cannot be remedied through the complaint process. Individual residential users have too little at stake to challenge AT&T's practices. Furthermore, AT&T contends that unreasonable discrimination between business and residential users does not violate Title II of the Communications Act.[12] If AT&T's position is correct, then individual consumers do not have even the theoretical ability to challenge unjust discrimination.

III. THE COMMISSION CAN AND SHOULD PROHIBIT AT&T'S PROPOSED DISCRIMINATION AGAINST RESIDENTIAL USERS

AT&T contends that it "does not restrict the use . . . of commercial long distance service"[13] even though a use restriction -- its "commercial" classification -- makes approximately 70 million households ineligible for that service. It continues the sophistry by stating that the Communications Act permits the use of a nonresidential class of service.[14] Even if the statute does not prohibit such

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[12]AT&T Comments at 15-18. But see pp. 7-8, infra.

[13]AT&T Comments at 15.

[14]Id. at 16-18. Section 201(b) states that interstate services may be classified into "day, night, repeated, unrepeated, letter, commercial, press, Government and such other classes as the Commission may decide to be just and reasonable." 47 U.S.C. § 201(b) (1988). AT&T has not demonstrated that LEC "business" classifications are synonymous with the Act's "commercial" class. Many "business"

classifications, it does not follow that the Commission should not or cannot forbid unreasonable discrimination by a dominant carrier against residential customers.

AT&T apparently believes that the Commission has no power to forbid unreasonable discrimination between a classification listed in Section 201(b) and a like service outside the class. That is plainly wrong. Section 202(a) forbids "any unjust or unreasonable discrimination in . . . classifications" and prohibits common carriers from providing undue or unreasonable preferences to or engaging in undue or unreasonable discrimination against "any . . . class of persons."[15] The Commission derives additional specific authority to regulate classification schemes from Sections 204[16] and 205[17] of the Act. Thus, although the Act provides that certain classifications may be permissible, it in no way exempts such classifications from otherwise complying with the requirements of Title II, nor does it deprive the Commission of its power

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customers, such as educational, governmental and non-profit organizations are not included within the plain meaning of "commercial." In addition, the statute can be interpreted as requiring the Commission to find that the listed classifications are reasonable, either generally or in particular circumstances.

[15] Id. § 202(a).

[16] Id. § 204(a)(1) (Commission authorized to suspend "any new or revised charge [or] classification").

[17] Id. § 204(a)(1) (Commission empowered to prescribe "just, fair, and reasonable" classifications).

or obligation to ensure that the classifications are lawful.[18]

IV. THE COMMISSION SHOULD USE PRICE CAPS TO REGULATE UNJUST DISCRIMINATION AND TARGETED RATE INCREASES

Price caps regulate overall price levels, but, with only slight modifications, could serve the even more important goal of controlling unjust discrimination. Instead of weakening price cap rules,[19] the Commission should utilize them to further the antidiscrimination provisions of Section 202(a). For example, WilTel has recommended linking Optional Calling Plan rates to AT&T's basic MTS rates, to give AT&T an incentive to provide all customers with decreased rates resulting from increased competition.[20]

Price caps also have not forced carriers to comply with Section 201(b)'s prohibition on unreasonable rates. Even the

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[18]Western Union Telegraph Co. v. Esteve Bros. & Co., 256 U.S. 566 (1921), did not, as AT&T implies, hold that the use of any classification listed in Section 201(b) or its Interstate Commerce Act predecessor is automatically rendered "just and reasonable." Western Union did hold that a telegraph company could "by permission of the Interstate Commerce Commission" file a rate and limitation of liability provision for service provided under the unrepeated service classification. Id. at 571. It did not discuss the commercial class of service or the power of the ICC to regulate classifications.

[19]Streamlining regulation of OCPs and nonresidential services would exacerbate the potential for unjust discrimination. See CompTel Comments at 6; Comments of Sprint Communications Company LP ("Sprint Comments") at 2.

[20]Comments of WilTel, Inc. ("WilTel Comments") at 5-6.

most outrageous rate hikes have not violated price cap rules when applied to certain services. The Commission should consider proposals, such as that advanced by ARINC,[21] which seek to limit such unlawful behavior.[22]

V. CONCLUSION

The Commission concluded in 1991 that price caps should remain in place for Basket 1 services.[23] Nothing has changed since then to warrant further deregulation of those services.[24] In fact, recent AT&T rate increases[25] indicate that additional regulation may be desirable. The Commission can best promote the public interest by using price cap rules to protect

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[21]See Comments of Aeronautical Radio, Inc. (ARINC Comments) at 3-5 and Attachment. Because of the tremendous increase in analog private line rates, id. at 4, the Commission should honor ARINC's request for immediate action on its proposal.

[22]WilTel's proposal, discussed above, would reduce the incentive to violate Section 201(b) as well as Section 202(a).

[23]Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5908 (1991), cited in Sprint Comments at 3 n.2.

[24]CompTel Comments at 2 (citing market share data); Sprint Comments at 3 (citing market share data); WilTel Comments at 2-3 (contrasting AT&T's pre-1990 market share declines with post-1990 data).

[25]CompTel Comments at 4; ARINC Comments at 4.

consumers directly and to promote their interests indirectly by limiting anticompetitive conduct.

WILTEL, INC.

/s/Joseph W. Miller

October 21, 1993

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CERTIFICATE OF SERVICE

I, Diana Neiman, hereby certify that copies of the foregoing **"Reply Comments of WilTel, Inc."** regarding CC Docket 93-197 in the matter of Revisions to Price Cap Rules for AT&T were served by hand or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list October 1, 1993.

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